IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

LETTERS PATENT APPEAL NO. 250 OF 2000

Sakalnarayan Singh Sitalaprasad Singh and others ... Appellants

Vs.

Kamlesh S/o. Awadhnarayan and others ... Respondents

Mr. U.S.R. Singh for Appellant.

Mr. Suresh Gole for Respondents.

CORAM : F.I. REBELLO & ANOOP V. MOHTA,JJ.

DATED : SEPTEMBER 03, 2004

P.C. :

1. This appeal arises from the order passed in First Appeal No. 997 of 1996 in S.C. Suit No. 6669 of 1979. The Plaintiff who are present appellants had filed suit for declaration that there exists partnership between Plaintiff and Defendant No. 1 since deceased and defendant No. 2 and Defendant NO. 3 since deceased in respect of the business as set out therein. This suit was heard along with S.C. Suit No. 6403 of 1979 and disposed of by common order dated 14.6.1996. The trial court by judgment dated 14.6.1996 was pleased to decree the suit in terms of Prayer Clause (a)

together with cost. The appeal came to be preferred against that order being F.A. No. 997 of 1996. The learned First Appellate Court heard First Appeal No. 997 of 1996 along with First Appeal No. 1001 of 1996 and in view of the order passed in Appeal No. 1001 of 1996 allowed the appeal No. 997 of 1996 and set aside the judgement and decree.

2. In view of the order passed by us in L.P.A. No. 251 of 2000, we allow this appeal. Set aside the order and remand the matter back to the First Appellate Court for decision afresh. The Fist Appeal No. 997 of 1996 will be heard along with First Appeal No. 1001 of 1996. No order as to costs.

4. There was earlier order directing respondents to deposit the sum of Rs.3,000/- before the City Civil Court and on failure to deposit the Court Receiver of this court be appointed as Receiver. We direct respondents to continue to deposit the said amount of Rs.3,000/- in the City Civil Court failing which Receiver of this court will be appointed as Court Receiver in terms of the earlier

order dated 16.8.2000 passed in L.P.A. No. 251 of 2000.

(F.I. REBELLO,J.)

(ANOOP V. MOHTA,J.)